

IN THE MATTER OF:

Order No. 10-XXX-ST

- a. ADEM Admin Code r. 335-4-5-.01(2) states that no receiver may expose scrap tires to the elements for more than thirty (30) days. At the time of inspection, Department personnel documented that the Registrant had exposed scrap tires to the elements for more than thirty (30) days.
- b. ADEM Admin Code r. 335-4-5-.03 requires that a receiver shall submit a summary of the previous quarter activities to ADEM utilizing ADEM Form 539. Department personnel documented that quarterly reports had not been submitted.
- c. ADEM Admin Code r. 335-4-5-.04 requires that the Registrant maintain an operating record at the facility or in an alternate location approved by ADEM, and that the operating record must contain copies of quarterly reports, registration authorization, manifests, etc. At the time of inspection, Department personnel documented that the Registrant had failed to maintain copies of quarterly reports in the operating record.
- d. ADEM Admin. Code r. 335-4-5-.01(2) requires that the Registrant develop and implement a vector control plan if tires are exposed to the elements for more than seven days. At the time of the inspection, Department personnel documented that a vector control plan had not been developed and implemented.
- e. ADEM Admin. Code r. 335-4-4-.05 requires that the Registrant use a written manifest for the shipment of scrap tires. At the time of the inspection, Department personnel documented that the Registrant had failed to use manifests for each shipment of scrap tires.
- f. ADEM Admin. Code r. 335-4-1-.04(4) requires that a tire dealer selling replacement tires shall collect the Scrap Tire Environmental Fee at a rate of one dollar (\$1.00) per tire. At the time of the inspection, Department personnel documented that the Registrant had failed to keep scrap tire fee collections current with the Alabama Department of Revenue.
- g. ADEM Admin. Code r. 335-4-5-.01(3) requires the Registrant to utilize permitted transporters to transport scrap tires. At the time of the inspection, Department personnel documented that the Registrant was utilizing an unpermitted transporter.

5. On October 1, 2009, the Department issued a Warning Letter to the Registrant for the violations documented during the September 14, 2009, inspection.

6. The Department did not receive a response to the October 1, 2009, Warning Letter.

7. On February 1, 2010, the Department issued a Notice of Violation (hereinafter "NOV") to the Registrant for the violations documented during the September 14, 2009, inspection.

8. The Department did not receive a response to the February 1, 2010, NOV.

### **CONTENTIONS**

Pursuant to Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by the Registrant; the economic benefit which delayed compliance may confer upon the Registrant; the nature, extent and degree of success of the Registrant's efforts to minimize or mitigate the effects of such violation upon the environment; the Registrant's history of previous violations; and the ability of the Registrant to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATION:** The Registrant did not comply with provisions of ADEM Admin. Code div. 335-4. The Department has no evidence of any irreparable harm to the environment. Exposing tires to the elements for longer than 30 days and failing to implement a vector control plan may pose a threat to human health and to the safety of the public as a result of the potential presence of disease vectors.

B. THE STANDARD OF CARE: The Registrant failed to operate in a manner commensurate with applicable scrap tire regulatory requirements.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if the Registrant has realized a significant economic benefit as a result of the violations noted.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of any efforts employed by the Registrant to mitigate any effects upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Registrant has a history of similar violations.

F. THE ABILITY TO PAY: The Registrant has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and has concluded that a civil penalty in the amount of \$3,500.00 is appropriate given the repeat actions of the violator, and in keeping with a penalty range imposed by the Department for similar violations at other facilities, as follows (see attachment A):

<u>Violation Type</u>	<u>Penalty Range for Violation Type</u>
Scrap Tire Facility Operation Requirements	\$100 - \$25,000

#### **ORDER**

Based on the foregoing findings of facts and pursuant to Ala. Code, §§ 22-22A-5(1), 22-22A-5(10), and 22-22A-5(18), it is hereby ordered:

A. That, not later than forty-five days after issuance of this Order, the Registrant shall pay to the Department a civil penalty in the amount of \$3,500.00 for the violations cited herein. Said penalty shall be made payable to the Alabama Department of Environmental Management by certified check or cashier's check and shall be remitted to:

Office of General Counsel  
Alabama Department of Environmental Management  
P.O. Box 301463  
Montgomery, Alabama 36130-1463

All checks shall reference the Registrant's name and address and the ADEM Administrative Order number of this action.

B. That, immediately upon the issuance date of this Order and continuing each and every day thereafter, the Registrant shall comply with all applicable provisions of ADEM Admin. Code div. 335-4.

C. That the issuance of this Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against the Registrant for the violations cited herein.

D. That failure to comply with the provisions of the Order shall constitute cause for commencement of legal action by the Department against the Registrant for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Lance R. LeFleur  
Director

## Attachment A

### Penalty Calculation Worksheet

**A & B Tires, LLC**

**(Scrap Tire Registration No. S0000030153)**

<b>Violation*</b>	<b>Number of Violations*</b>	<b>Seriousness of Violation &amp; Base Penalty*</b>	<b>Standard of Care*</b>	<b>History of Previous Violations*</b>
Tires exposed longer than 30 days	1	1000		
No vector control plan	1	500		
Quarterly reports not submitted	1	500		
Failure to maintain complete operating record	1	250		
Failure to manifest properly	1	250		
Failure to utilize permitted transporter	1	500		
Failure to keep scrap tire fee collections current with ADOR	1	500		
<b>Totals:</b>	-	<b>3,500</b>		
<b>Economic Benefit:</b>	-			
<b>Mitigating Factors:</b>	-			
<b>Ability to Pay:</b>	-			
<b>Other Factors:</b>	-			
<b>Civil Penalty:</b>				<b>\$3,500.00</b>

Footnotes

\* See the "Findings" of the order.